

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-125-E - ORDER NO. 2020-840
DECEMBER 30, 2020

IN RE: Application of Dominion Energy South Carolina, Incorporated for Adjustment of Rates and Charges (*This filing includes a request for an increase to retail electric rates) (See Commission Order No. 2020-313))	ORDER RULING ON MOTION FOR PARTIAL SUMMARY JUDGMENT
)	
)	
)	

OVERVIEW

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Motion for Partial Summary Judgment filed by the South Carolina Office of Regulatory Staff (“ORS”). The Motion is filed pursuant to S.C. Code Regs. Section 103-829 and South Carolina Rule of Civil Procedure 56, asserting that it is entitled to a ruling as a matter of law that Dominion Energy South Carolina, Inc.’s (“DESC’s,” “Dominion’s,” or “the Utility’s”) proposed amendments to Section V of its General Terms and Conditions are unlawful and cannot be approved. (See Application for an Increase in Rates and Charges of August 14, 2020, Exhibit B at 65.) ORS asserts that the Company requests that the Commission amend Section V entitled "Company's Liability," to substantially modify its potential liability to customers and others, including its potential liability under tort law, and that DESC provides no explanation in its Application or direct testimony as to why this modification is necessary. ORS further states that DESC's proposed modifications are unreasonable and shift liability from DESC to the customer to the benefit of the Company, and that the proposed language seeks to immunize DESC from

various types of potential liability. In addition, the ORS alleges that DESC is asking the Commission to adopt a significant expansion of its current limitations of liability without regard to its own negligence in Section V of its General Terms and Conditions.

Further, ORS asserts that the Utility appears to seek to limit its liability even in instances where the Company is negligent and would actually require its customers to indemnify the Company. ORS refers to the proposed changes as a “contract of adhesion,” and asserts that fairness and the application of sound regulatory policy require that DESC's customers not be subject to unique, unprecedented, and onerous terms and conditions to which customers of other state electricity providers are not subject.

In DESC’s Return to the ORS Motion, the Utility asserts that the proposed revisions comply with South Carolina law, and that the revisions were not intended to limit the Company’s liability for its own negligence, and that nothing in the revised language addresses damages to or injuries resulting from actions of the Company. Also, DESC claims that the revisions are in line with “the public policy of the majority of States.” Further, DESC states that a decision on this matter is a factual policy question not appropriate for summary judgment. DESC proposes an alternative, to the extent that the Commission believes clarification is necessary. The Utility is willing to submit a second set of proposed revisions to Section V of the Company’s terms and conditions that will confirm that it does not seek to limit liability for its negligence in the revisions to the General Terms and Conditions.

ORS responded to DESC’s Return and continued to assert that the original revisions should be rejected. In the alternative, ORS recommended that the Commission accept

DESC's proposal to submit a second proposed revision to Section V to clarify that DESC will not be insulated from its own negligence. ORS also states that the revision should address Paragraph B, which DESC's Return did not address, and that DESC should remove all indemnification language from the proposed revisions. ORS also requests the opportunity to review any such revised DESC proposed language. It should be noted that this issue is addressed in the pre-filed rebuttal testimony of DESC witness Allen Rooks, which will be presented during the merits hearing of the rate case.

LAW

ORS's original position is that it is entitled to Partial Summary Judgment pursuant to S.C. Code Ann. Regs. 103-829 and South Carolina Rule of Civil Procedure 56, asserting that it is entitled to a ruling as a matter of law that DESC's proposed amendments to Section V of its General Terms and Conditions are unlawful and cannot be approved.

S.C. Code Ann. Regs. 103-829 is the general Commission Motion rule. Part A sets, among other things, the time periods for responses to the motion and replies to the responses and allows the Commission or its designee to modify the stated times for good cause. S.C. Code Ann. Regs. 103-829.A (2012). Part B notes that the Commission may, upon notice, set oral arguments in advance of the scheduled hearing in the proceeding to which the motion pertains. S.C. Code Ann. Regs. 103-829.B (2012). Otherwise, the regulation states that if no advance oral arguments are held, then arguments and response shall be made at the commencement of the hearing. The regulation allows the presiding officer to make a ruling on the motion at the completion of oral arguments, at the

conclusion of the hearing, or in the written order disposing of the subject matter of the proceeding.

South Carolina Rule of Civil Procedure 56 governs summary judgment. In general, summary judgment is rendered when there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Etheridge v. Richland Sch. Dist. 1, 341 S.C. 307, 534 S.E. 2d 275 (2000). However, the Court must construe all ambiguities, conclusions and inferences arising from the evidence against the moving party. City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E. 2d 855 (1994). Because summary judgment is a drastic remedy, it should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Murphy v. Tyndall, 384 S.C. 50, 681 S.E. 2d 28 (Ct. App. 2009).

Although the South Carolina Rules of Civil Procedure have only been adopted by the Commission for discovery matters not covered in Commission Regulations, as per S.C. Code Ann. Regs. 103-835, the Commission has in practice ruled on Motions for Summary Judgment on numerous occasions, as is evidenced by searching for the title “Summary Judgment” in the Commission’s Docket Management System.

In the present case, one pertinent fact seems to be in question, which is whether or not DESC actually seeks to limit its liability even in instances where the Company is negligent, and would actually require its customers to indemnify the Company in such instances. DESC denies that is its intent and has actually offered to refile the proposed changes to include specific language clarifying that it does not seek to limit its liability even when it is negligent.

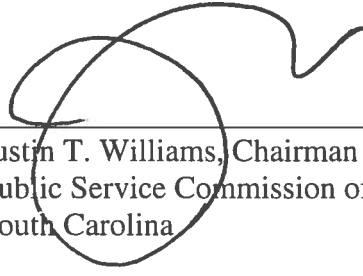
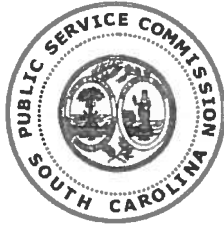
After due consideration, it appears to the Commission that the matter may indeed be more suited as a policy consideration than as the subject of a partial summary judgment motion. The parties clearly dispute the intent of the language, although DESC has offered to file a modified version of its changes. The Commission accepts DESC's offer to file a modified version of its changes so as to clearly state that it is not intending to insulate itself from liability. The new version should also clarify the Utility's intent as to indemnification, and address ORS's doubts about Paragraph B, which DESC has not addressed. DESC should file its modified version with the Commission and serve it on all parties and, if so desired, DESC may file additional testimony on this issue.¹ The other parties to the proceeding may file responsive testimony and exhibits with the Commission with service on the parties no later than December 23, 2020.² All parties would then have the opportunity to address questions to DESC about the matter at the rate case hearing, and the Commission could rule on the matter in the final order.

¹ On December 16, 2020, DESC filed a modified version of Section V of its General Terms and Conditions along with supplemental testimony.

² The South Carolina Department of Consumer Affairs and the South Carolina Office of Regulatory Staff filed responsive testimony on December 22, 2020, and December 23, 2020, respectively.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina